

IN THE SUPREME COURT OF THE STATE OF DELAWARE

|                           |                                |
|---------------------------|--------------------------------|
| JOURDEAN S. LORAH,        | §                              |
|                           | § No. 662, 2010                |
| Employee/Appellant Below- | §                              |
| Appellant,                | §                              |
|                           | § Court Below—Superior Court   |
| v.                        | § of the State of Delaware     |
|                           | § in and for New Castle County |
| HOME HELPERS,             | § C.A. No. 10A-01-010          |
| INC./DELAWARE RESPITE,    | §                              |
|                           | §                              |
| Employer/Appellee Below-  | §                              |
| Appellee.                 | §                              |

Submitted: April 15, 2011  
Decided: May 26, 2011

Before **STEELE**, Chief Justice, **HOLLAND** and **JACOBS**, Justices

**ORDER**

This 26th day of May 2011, upon consideration of the appellant's opening brief and the record below,<sup>1</sup> it appears to the Court that:

(1) The appellant, Jourdean S. Lorah, filed an appeal from the Superior Court's September 29, 2010 order affirming the December 31, 2009 decision of the Unemployment Insurance Appeal Board (the "Board" or the "UIAB"), which denied her claim for unemployment benefits. We find no merit to the appeal. Accordingly, we affirm.

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<sup>1</sup> By letter dated February 2, 2011, the Court informed the parties that, because the corporate appellee had not obtained counsel and would not be participating in the appeal, the appeal would be decided on the basis of the opening brief and the record below.

(2) The record reflects that Lorah filed a claim for unemployment benefits on July 19, 2009 claiming that Krista Gaull, the president of Home Helpers, Inc./Delaware Respite (“Respite”), had substantially reduced her hours of employment as a home health aide in retaliation for her complaints about unsafe working conditions. On August 5, 2009, the Claims Deputy denied Lorah’s request, finding that she had voluntarily left her employment with Respite without good cause. Lorah then appealed to the Appeals Referee, who, following a hearing, affirmed the Claims Deputy in a decision dated September 8, 2009.

(3) Lorah then filed an appeal with the Board. The hearing before the Board took place on November 18, 2009. Both Lorah and Gaull, as the employer representative, testified. In its decision dated December 31, 2009, the Board found that Lorah voluntarily quit her employment with Respite without good cause and, therefore, was disqualified from receiving unemployment benefits. Thereafter, Lorah filed an appeal in the Superior Court, which affirmed the decision of the Board.

(4) The transcript of the hearing before the Board reflects the following. Lorah began her employment as a home health aide with Respite in May 2007. She provided basic health care and household chores for Respite’s clients on an as-needed basis. In November 2007, Lorah signed

the Respite employee handbook, thereby acknowledging her understanding that the caregiver position was a permanent, but part-time, position. Among other things, the handbook required all caregivers to report any work-related injury immediately to the employer, even if no medical attention was required. Although Lorah worked a full-time schedule at least once during her two years with Respite, the number of hours worked depended entirely on the particular needs of Respite's clients at any given time.

(5) In June 2009, Lorah notified Gaull that a female client had made an unwanted sexual contact with her on May 20, 2009. Lorah testified that she informed Gaull about the incident on June 4, 2009. Gaull testified that she did not learn about the allegation until June 12, 2009, the day Lorah gave her notice. Lorah's last day on the job was June 27, 2009. Lorah filed a police report regarding the incident on October 26, 2009, on the advice of the attorney representing her at that time. Lorah testified that, after she reported the incident to Gaull, her hours dropped precipitously, which led to her decision to give notice.

(6) Gaull testified that Lorah was a good worker. However, Lorah reported several unwanted sexual advances by female clients. Gaull stated that she investigated every allegation made by Lorah. As a result, Respite lost those clients, who adamantly denied the allegations. Gaull testified that

the hours of Respite's employees were never guaranteed, but depended entirely on the needs of the clients at any particular time. Gaull denied that Lorah's reduced hours were the result of the reported incident, but, rather, reflected normal business fluctuations, including the loss of clients about whom Lorah had made complaints.

(7) In this appeal, Lorah claims that the Superior Court erred and abused its discretion when it affirmed the decision of the Board. She argues that she is entitled to unemployment benefits because she demonstrated "good cause" for leaving her employment with Respite.

(8) The standard of review of the Superior Court on appeal from a decision of the UIAB is whether there is substantial evidence in the record to support the Board's findings and whether such findings are free from legal error.<sup>2</sup> Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.<sup>3</sup> The Superior Court does not independently weigh the evidence, determine questions of credibility or make its own factual findings.<sup>4</sup> The standard of review

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<sup>2</sup> *UIAB v. Duncan*, 337 A.2d 308, 309 (Del. 1975).

<sup>3</sup> *Oceanport Ind., Inc. v. Wilmington Stevedores, Inc.*, 636 A.2d 892, 899 (Del. 1994).

<sup>4</sup> *Johnson v. Chrysler Corp.*, 213 A.2d 64, 66 (Del. 1965).

applicable to this Court is the same standard of review applicable to the Superior Court.<sup>5</sup>

(9) Under Delaware law, an employee is disqualified from receiving unemployment benefits if he or she voluntarily ends his or her employment without good cause.<sup>6</sup> “Good cause” must be attributable to the employment itself<sup>7</sup> and may be established by such objectively reasonable circumstances as a substantial reduction in wages or hours or a substantial deviation from the original employment agreement to the detriment of the employee.<sup>8</sup> The burden of demonstrating “good cause” rests with the employee claiming benefits.<sup>9</sup>

(10) We have carefully reviewed the record in this case, including the transcripts of the hearings before the Appeals Referee and the UIAB, as well as the written decisions of the Claims Deputy, the Appeals Referee, the UIAB and the Superior Court. The Board credited the testimony of the employer’s representative about when the allegation of improper sexual contact was reported to the employer and the reason for the employee’s reduced hours thereafter and, on those grounds, found that the employee had

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<sup>5</sup> *Id.*

<sup>6</sup> Del. Code Ann. tit. 19, §3314(1).

<sup>7</sup> *Unemployment Insurance Appeal Board v. Division of Unemployment Insurance*, 803 A.2d 931, 936 (Del. 2002).

<sup>8</sup> *Id.*

<sup>9</sup> *Longobardi v. UIAB*, 287 A.2d 690, 692 (Del. Super. 1971), *aff’d* 293 A.2d 295 (Del. 1972).

not carried her burden of demonstrating “good cause” for leaving her employment. We conclude that there was substantial record evidence supporting those findings of the Board and that the Board committed no legal error. The judgment of the Superior Court must, therefore, be affirmed.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Randy J. Holland  
Justice